

REMARKS

Applicant has amended claims 1, 2, 3, 5, 6, 8, 9 and 10, cancelled claims 7, 11, 13, 15 and 18 without prejudice and further amended the drawings. Applicant respectfully submits that these amendments to the claims and drawings are supported by the application as originally filed and do not contain any new matter. Accordingly, the Office Action will be discussed in terms of the drawings and claims as amended.

The Examiner has objected to the specification, stating that the specification fails to disclose any page 1 or a separate paragraph entitled "Brief Description of the Drawings." In reply thereto, Applicant respectfully submits that Applicant submitted a specification comprising 16 pages (however, the first page is unnumbered and the second page of the specification includes page number 2). Accordingly, Applicant respectfully submits that the specification does include page 1, though unnumbered. Still further, Applicant directs the Examiner's attention to page 3 wherein Applicant's specification includes a "BRIEF EXPLANATIONS OF DRAWINGS". Applicant respectfully submits that except for the use of explanations instead of description, the meaning is exactly the same. Accordingly, Applicant respectfully submits that the specification does disclose a Brief Description of the Drawings, though with a different title. In view of the above, therefore, Applicant respectfully submits that the specification does include that which the Examiner states it does not and Applicant respectfully request that the Examiner withdraw his objection.

The Examiner has objected to Figs. 1 and 2 as failing to contain the captions. By the enclosed Letter to the Chief Draftsperson submitted for the Examiner's approval, Applicant has amended Figs. 1 and 2 to include the captions.

The Examiner has apparently objected to the claims, stating that it contains eighteen composition claims reciting plural active agent species and are improperly indefinite and alternative in each recitation of "or" and "such as" which appears in line 1 of claims 1, 2 and 3 and claims 8-11 improperly recite "in any of claim 1 through claim 5". Applicant has amended the claims to eliminate the indefiniteness and alternatives and respectfully submits that claims 1-6, 8-11, 12, 14, 16 and 17 are all definite and particularly claim Applicant's invention.

The Examiner has somehow only selected claims 1, 5, 6 and 7 to apply an art rejection 102 without Applicant making any election of species or selection of invention. In particular, the Examiner has rejected claims 1, 5, 6 and 7 under 35 USC 102 as being anticipated by or, in the

alternative, under 35 USC 103 as being obvious over each of Brizzolara et al. (I), Brizzolara et al. (II), Dunn, Rajaiaj et al. (I-II), Little et al., Brockbank et al. and Ayon-Covarrubias.

In reply thereto, Applicant has carefully reviewed each of the art relied upon by the Examiner and respectfully submits that each of the prior art discloses a composition which is different from Applicant's invention. In particular, Applicant's review of Brizzolara et al. (I) indicates that it discloses antibiotics and antifungal agents in a polymer matrix; Brizzolara et al. (II) discloses the use of a therapeutic agent consisting of a plurality of dry, discrete microparticles in a matrix comprising a biocompatible and biodegradable polymer; Dunn requires an organic solvent; Rajaiaj et al. (I-II) is a dental adhesive; Little et al. discloses a screening method for identifying anti-microbial agents using a membrane of potential indicator dies, Brockbank et al. is for use with transplants and Ayon-Covarrubias is a product for the external treatment of a foot fungus.

Still further, Applicant respectfully submits that the preamble does have patentable weight since it sets an environment in which Applicant's invention is used (see Sumitomo v. Corning Glass).

In view of the above, therefore, Applicant respectfully submits that claims 1, 5 and 6 are not anticipated by nor obvious over each of Brizzolara et al. (I), Brizzolara et al. (II), Dunn, Rajaiaj et al. (I-II), Little et al., Brockbank et al. or Ayon-Covarrubias.

The Examiner then rejects claims 1, 5, 6 and 7 under 35 USC 103 as being obvious over Little et al. in view of which the specific combination consisting of amphotericin B antifungal agent and Azithromycin antibacterial antibiotic agent would be immediately envisioned.

In reply thereto, Applicant would like to incorporate by reference his comments above concerning Applicant's invention and Little et al. and again point out that Little et al. is merely a method of identifying antifungal compounds and antimicrobial compounds utilizing dies. Accordingly, Applicant respectfully submits that claims 1, 5 and 6 are not obvious over Little et al. in view of amphotericin B antifungal agent and Azithromycin antibacterial antibiotic agent.

Applicant further takes note of the Examiner's apparent restriction or election of species requirement. However, Applicant's review of this requirement indicates that it is confusing and unintelligible. Applicant cannot understand what the species required by the Examiner are or if the Examiner is requesting that Applicant elect a species such as the one claimed by claim 1 or 2 and then further elect a subspecies as set forth in the other claims (this is suggested to Applicant

by the Examiner's use of the phrase "(if further elected)" in paragraphs (c) through (i)). As a result, Applicant is unable to elect a species consistent with a request from the Examiner and Applicant respectfully requests that the Examiner provide Applicant with a clear statement of what the Examiner requires. In any event, Applicant has amended the claims to reduce the number of claims and the various combinations.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned "Version with markings to show changes made."

Applicant further respectfully and retroactively requests a three month extension of time so as to respond to the Office Action. Please charge Deposit Account No. 11-1445 in the sum of \$465.00 as the fee.

In view of the above, therefore, it is respectfully requested that this Amendment be entered, favorably considered and the case passed to issue.

Please charge any additional costs incurred by or in order to implement this Amendment or required by any requests for extensions of time to KODA & ANDROLIA DEPOSIT ACCOUNT NO. 11-1445.

Respectfully submitted,

KODA & ANDROLIA

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William L. Androlia
Name


Signature

1/3/2003
Date

Application No. 10/038,565

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Claim 1 has been amended as follows:

1. (Amended) An oral treatment/care agent[, such as a dental treatment/care agent or periodontal treatment/care agent, or an intraoral-bone anaplastic agent, said agent] comprising an antifungal agent and antibiotic.

Claim 2 has been amended as follows:

2. (Amended) An oral treatment/care agent[, such as a dental treatment/care agent or periodontal treatment/care agent, or an intraoral-bone anaplastic agent, said agent] comprising an immunostimulator and antibiotic.

Claim 3 has been amended as follows:

3. (Amended) An oral treatment/care agent[, such as a dental treatment/care agent or periodontal treatment/care agent, or an intraoral-bone anaplastic agent, said agent] comprising an oral bacterial flora-controlling agent that will restore abnormal or sick oral bacterial flora to a normal or healthy oral bacterial state; and a periodontal-pocket bacterial flora-controlling agent that will eliminate or convert the bacteria, fungi, viruses and other microbes in a periodontal pocket into a group of symbiotic bacteria.

Claim 5 has been amended as follows:

5. (Amended) The oral treatment/care agent according to claim 1, wherein the antifungal agent [in claim 1] is amphotericin B.

Claim 6 has been amended as follows:

6. (Amended) The oral treatment/care agent according to claim 1, 2 or 5, wherein the antibiotic [in claim 1 or claim 2] is selected from the group consisting of [a] macrolide antibiotic and azithromycin.

Cancel claim 7 without prejudice.

Claim 8 has been amended as follows:

8. (Amended) The oral treatment/care agent [in any of] according to any one of claim 1 through claim 5, further comprising a membrane for rebuilding the periodontium.

Claim 9 has been amended as follows:

9. (Amended) The oral treatment/care agent [in any of] according to any one of claim 1 through claim 5, further comprising a periodontium inducing agent or dental-pulp inducing agent.

Claim 10 has been amended as follows:

10. (Amended) The oral treatment/care agent [in any of] according to any one of claim 1 through claim 5, further comprising a component of a prosthesis through application thereto or inclusion therein.

Cancel claim 11 without prejudice.

Cancel claim 13 without prejudice.

Cancel claim 15 without prejudice.

Cancel claim 18 without prejudice.